CHAPTER 80-1-5

LOANS AND DISCOUNTS

80-1-5-.01 Loans Generally, Interpretations and Rulings.

(1) "Indirect" loans as used in Code Section 7-1-285 shall mean loans made for the substantial benefit of a third party where repayment of the loan is dependent on activities of the third party rather than solely dependent on the resources of the borrower.

(2) Loans extended to any Industrial Development Authority domiciled in Georgia which are dependent upon revenues obtained under an assigned lease contract naming the Authority as lessor shall be considered as loans to the lessee in calculating legal loan limitations.

(3) Loans by a bank to any wholly-owned subsidiary of the bank, which subsidiary is located within an approved office of the bank and which has agreed to abide by all laws, rules and regulations applicable to the bank shall be exempt from the twenty-five (25) percent maximum lending limit of the bank. In addition, to the extent allowed by other applicable law and with the prior written approval of the Department, this exemption from the twenty-five (25) percent maximum lending limit may be extended to loans from a bank to a wholly owned subsidiary of an affiliated bank.

(4) In determining amounts loaned, all amounts guaranteed or insured by any instrumentality of the United States government shall be deducted to the extent of the guaranty or insurance coverage. Immediate and deferred participations on loans by an instrumentality of the United States government shall also be excluded. Where the source of repayment of a loan, i.e. lease payments, is guaranteed by an instrumentality of the United States government and such guarantee is assignable and has been assigned to the bank, such loan may be excluded to the extent of the guarantee.

(5) In determining whether or not a loan in excess of the fifteen (15) percent limitation is secured by "good collateral and other ample security," the lack of a perfected lien, inadequate insurance, required margins between collateral value and the amount of the loan shall be prima facie evidence of inadequate security to the debt. Loans secured by endorsement must be supported by a financial statement on the endorser, properly signed, which is not more than eighteen months old, if the loan is to be considered secured, and such statement must reflect adequate income to service the loan and unencumbered equity sufficient to protect the loan.

(6) A borrower's deposit accounts in the lending bank will be regarded as collateral to a loan when they are not subject to check or withdrawal, mature on or after the loan which is secured, are under the sole control of the bank, and are properly assigned. Where, according to the terms of the deposit contract, the deposit is eligible for withdrawal before the secured loan matures, the bank must establish internal procedures to prevent release of the security without the lending

bank's prior consent. If proper procedures are in place, such deposits will be considered as collateral. Where deposit balances are properly taken as collateral to a loan, the loan may be reduced to the extent of the deposit in determining the amounts loaned for either secured or unsecured legal lending limitations, as applicable.

(7) Except as provided in this paragraph, extensions of credit in the form of insufficient funds checks held beyond the permissible return date and overdrafts shall be considered "extensions of credit" included in determining compliance with the legal limitation as it applies to the maker of the check or owner of the overdraft. Such extensions of credit shall also be subject to the requirements for prior written approval and ample collateral where the total indebtedness of the borrower exceeds fifteen (15) percent of the statutory capital base. Such extensions of credit will not be considered extensions of credit for purposes of compliance with the above legal loan limitations and requirements, provided that the extension is inadvertent, which requires that:

(a) The extension(s) do not exceed the aggregate amount of $1,000 at any one time; and

(b) The account is not overdrawn or the insufficient funds check held for more than five (5) business days.

(8) Wherever approval of the Board of Directors or Loan Committee is required, such approval must be specific, prior, written approval of each extension of credit, except that advances made under a master note covering a specific purpose or project need not receive specific approval where such approval was accorded the master note. Annual approval of a line of credit may be used where interest rate, repayment terms, and anticipated collateral are clearly identified and current credit information is on file. Commodity, floor-plan and discount lines of credit which are anticipated to exceed fifteen (15) percent of the statutory capital base may be approved annually to be deemed appropriate by the Board of Directors without each transaction receiving specific prior approval. When in excess of twenty-five (25) percent of the statutory capital base, the line must be reviewed quarterly by the Board of Directors or Loan Committee.

(9) In determining the primary collateral basis upon which a loan is granted, that portion of the collateral having the greatest market value shall be assumed to be the primary collateral and the credit worthiness of the individual and of endorsers shall not be considered in determining conformity with the law unless proper, current, financial information is in file on the borrower or endorser.

(10) In determining amounts loaned to "any person, firm or corporation," amounts acquired as a result of purchasing accounts receivable from a third party (factoring) shall not be considered; provided, the aggregate debt of the obligor including factored accounts shall not exceed thirty-five (35) percent of the bank's statutory capital base.

(11) Extensions of credit to political subdivisions of the State of Georgia authorized to levy taxes or backed by the taxing authority of another political subdivision shall qualify for exemption from the twenty-five (25) percent loan limitation under the provisions of Code Section 7-1-285, subparagraph (c)(4)(B), only where such extension of credit otherwise conforms with the provisions of Georgia Constitution, Article 9, Section 5.

(12) Where the "statutory capital base" as defined in Section 7-1-4(35) is reduced by operating losses, loan losses, or for other reasons, existing debt which was in conformity with the legal limitations at the time it originated shall not be construed to be non-conforming with new

legal limitations resulting from the reduced statutory capital base; provided, however, in the absence of agreements to the contrary and originating at the time such debt originated regarding repayment programs for the debt in question, any extension, renewal, rollover or the like of the existing debt shall be considered to be a new loan and must conform to the new, lower lending limitations. Demand notes in excess of resultant lower lending limitations or included in aggregate debts in excess of such limitations must be called for maturity within six (6) months after it has been determined that the new lending limits are applicable; provided, such notes may be wholly or partially renewed on a demand basis or otherwise where the aggregate debt of the borrower conforms to the new lending limits.

(13) The Department of Banking and Finance shall consider the liabilities of separate persons, corporations and entities to be combined for lending limit purposes, when there is no evidence of a separate source of repayment, there is an apparent lack of ability to service the obligation from the operations of the separate person or corporation without relying on a related source of repayment, or where the separate entities make common use or are dependent upon funds of the group. "Related" shall mean connected by corporate or business structure or by common use or dependence upon funds, facilities or personnel.

Authority Ga. L. 1974, pp. 733, 790-797; Ga. L. 1983, Act No. 255, effective March 16, 1983.

80-1-5-.02 Real Estate Loans.

(1) A real estate loan (including a leasehold) within the meaning of Part 365 of the Federal Deposit Insurance Corporation's rules and regulations, including 12 C.F.R. 365.1 and 365.2 and the Interagency Guidelines for Real Estate Lending Policies in Appendix A, and 12 C.F.R. 208.51 and the guidelines contained in 12 C.F.R. Part 208 in the case of Federal Reserve member banks, shall comply with the Real Estate Lending Standards of the above laws.

(a) Interest only loans shall be permitted for single family owner-occupied residential loans (not to exceed one hundred percent (100%) of the fair market value of the property pledged), which may be made for a period not to exceed ten (10) years, after which time sufficient principal payments must be made on a regular basis to amortize the loan in accordance with Rule 80-1-5-.02(1)(b).

(b) Amortization requires that there will be a reduction of the principal of the debt during the life of the loan sufficient to repay the loan. Such reductions must occur at regular intervals and, if extended indefinitely, must amortize the loan over not more than forty (40) years; provided, however, nothing in this subsection shall limit the use of any mortgage contract which might result in negative amortization (lack of sufficient payment to pay all accrued interest) interest only loans or extended repayment periods due to fluctuations in interest rates or to graduated payments, provided that the terms of the contract contemplate full amortization of the loan.

(2) The limitations in O.C.G.A. §7-1-285 for banks will be strictly enforced. If a loan could be made without real estate as security, a bank will not be penalized for adding real estate as collateral in an abundance of caution. A notation in the loan file must indicate this lack of reliance on the real estate and must meet general safety and soundness standards for credit risk. This does not constitute a waiver of federal law requirements, and the soundness of the loan should always be considered.

(3) Except as provided herein or otherwise according to statute, banks may not acquire directly or indirectly an ownership interest in real estate without the prior written approval of the Department. No approval is necessary for a bank to acquire an interest in real estate, where acting pursuant to policies adopted by its board, a bank agrees by written commitment to participate in the financing of the purchase, development, or improvement of such real estate, provided:

(a) The written commitment provides for termination through sale or otherwise of the bank's ownership interest upon the earlier of substantial repayment of the underlying financing or ten (10) years;

(b) The bank's ownership interest in the real estate does not exceed the lesser of

1. The equity interest of the borrower, or

2. Twenty-five percent (25%) of the appraised value of the completed project upon which the lending commitment is based;

(c) Where the bank's interest is in the form of stock in a corporation which owns the real estate, the investment in the stock shall not exceed the lesser of

1. Fifty percent (50%) of the stock of the corporation, or

2. Twenty-five percent (25%) of the appraised value of the real estate owned by the corporation which is subject to the written commitment to finance. Provided, the foregoing shall not prohibit any bank from taking an ownership position through a wholly owned subsidiary, except that the subsidiary's interest shall be limited as set forth in subsections (a) and (b) of this section;

(d) Where the financing associated with the direct investment in real estate is subject to participation with other lenders, the aggregate direct investment by all such lenders may not exceed the limitations set forth in subparagraph (ii) of this section;

(e) The bank's ownership participation as provided herein is approved by its board of directors prior to the execution of any written commitment or is otherwise consistent with a previously adopted provision of the bank's loan policies governing such participation;

(f) The bank's ownership investment involving any single borrowing entity, when aggregated with investments through any lending transaction with such borrowing entity, is otherwise subject to the provisions of this regulation and the provisions of O.C.G.A. §7-1-285 and O.C.G.A. §7-1-286, to the same extent as would be applicable if such equity investment were itself an extension of credit; and

(g) The aggregate direct or indirect investment in such real estate for all such purposes set forth herein shall not exceed the statutory capital base of the bank.

Authority Ga. L. 1974, pp. 733, 795-797; Ga. L. 1983, Act No. 255, effective March 16, 1983; Ga. L. 1989, p. 1252; O.C.G.A. §7-1-61; O.C.G.A. § 7-1-286.

80-1-5-.03 Commodity Loans.

(1) In order that commodity loans and advances may be exempt from the twenty-five (25) percent legal loan limitation of the lending bank, strict compliance with the following requirements must be met:

(a) The commodity must have a market value with ready sale in the open market.

(b) First lien security title to the commodity must be indicated on record in the name of the bank. Where commodities are stored in a warehouse, such lien must be evidenced by the bank's physical possession of warehouse receipts covering the commodities or, if electronic warehouse receipts are utilized, by recordation of bank's lien position on the electronic warehouse receipt or the electronic records of the state approved electronic receipt provider, which must be accessible to the bank. Bank must also have appropriately executed security agreements and financing statements.

(c) The commodity must be covered by insurance against fire and other appropriate hazards with loss payee designated as the lending bank.

(d) The initial advance or loan shall not exceed eighty (80) percent of the market value of the commodity on the date of the loan, the margin of twenty (20) percent between the market value and outstanding loan is maintained at all times, and to that end, the bank shall have the right to call for additional collateral if the margin falls below twenty (20) percent and, if the additional collateral is not provided, the bank shall have the right to sell the commodity on the open market. For purposes of this paragraph, "market value" shall mean the local cash price bid for the commodity in question; provided, "market value" shall mean the nearby future price applicable to future contracts to sell existing commodities where the total commodity debt owed by the owner of the commodity to the originating bank with respect to the hedged commodity does not exceed fifty (50) percent of the originating bank's statutory capital base.

(e) Where the borrower is not independent of the warehouseman or other person holding the commodity, the commodity must be subjected to inspection by the lender or his agent at least monthly and a written record of such inspections must be maintained.

(f) The obligation matures in not more than ten (10) months if secured by nonperishable staples; or the obligation matures in not more than six (6) months if secured by refrigerated or frozen staples.

(g) There must be a written agreement, signed by both the bank and the borrower, which clearly outlines the requirements of the bank and the duties and responsibilities of the borrower.

(2) Manufactured or agricultural products in the processing stages shall not be considered as commodities within the meaning of this regulation, but are inventory or goods-in-process to be treated as additional collateral only.

(3) In order for livestock to qualify as commodities subject to treatment under Section (1) of this rule, the borrower must be engaged in livestock production and the collateral must be marked for identification and confined to feed lots ready for sale in the open market. Livestock

held as fixed assets such as for reproduction or dairy purposes do not qualify for the treatment accorded under Section (1) of this rule.

(4) Manufactured products commonly financed under floor-plan arrangements shall be subject to treatment as commodities under Section (1) of this rule if they meet the requirements of that section and the conveyance of title identifies each individual unit and does not convey merchandise in bulk. Liens on merchandise in bulk are considered as inventory loans and not commodity loans.

Authority Ga. L. 1974, pp. 733, 793-797; Ga. L. 1983, Act No. 255.

80-1-5-.04 Participation Loans. Amended.

(1) That portion of a loan which is sold by the originating bank to another bank must conform to all laws and regulations applicable to that category of loan to the same extent as if the purchasing bank had itself originated the loan; i.e., collateral documentation, maturity, loan-to-collateral value ratio, maximum loan limits, etc. The purchasing bank shall obtain from the selling bank copies of all pertinent documents or a summary of sufficient information therefrom to allow that bank to conclude that all legal and regulatory requirements have been met and that the loan may be legally carried upon its books.

(2) Participation in Pools of Loans or Discount Lines:

(a) Loans contained in the pool or discount line must be physically marked or specifically identified on the selling bank's records.

(b) The participation agreement must call for the participant to share pro rata in losses experienced by the pool or discount line.

(c) The participation agreement must provide for periodic, at least quarterly, reports by the seller to the purchaser as settlement for losses incurred and providing past due status of loans contained in the pool or discount line.

(d) Where the participation purchased is in excess of fifteen (15) percent of the purchasing bank's statutory capital base, the participation must have the prior written approval of the bank's Board of Directors or Loan Committee.

(3) Where there exist agreements to repurchase or loss indemnity agreements between the selling and purchasing banks, participations shall be treated as loans to the selling bank by the purchasing bank and the amount of the participation shall be considered to be remaining on the selling bank's books for purposes of legal limitations.

Authority Ga. L. 1974, pp. 733, 791-792; Ga. L. 1983, Act No. 255, effective March 16, 1983.

80-1-5-.05 Discounted Dealer Paper. Amended.

(1) Purchases of dealer paper, with or without recourse, may generally be made without limitation; however, where the aggregate amount of such paper outstanding exceeds twenty-five (25) percent of the bank's statutory capital base and the paper has been taken with recourse or pursuant to an agreement to repurchase between the bank and the dealer, the following conditions must be met:

(a) The dealer must maintain a dealer's reserve in an amount equal to at least five (5) percent of the total outstanding balance on notes discounted with recourse or pursuant to the repurchase agreement and such reserve must be under the control of the lending bank.

(b) The bank must maintain a balance sheet and profit and loss statement on the dealer covering the most recent fiscal period for which such information is available, but in no event shall the statements be more than eighteen months old.

(c) The obligors on all such notes shall have been notified that the bank is owner of the note and payments are to be made directly to the bank.

(d) The dealers shall not be permitted to make payments on the discount notes but shall be required to take over, in full, any note which is past due four months or more.

(e) There must be a written agreement, signed by both the bank and the dealer, which clearly outlines the requirements of the bank and the duties and responsibilities of the dealer.

(2) Whenever the aggregate outstanding balance of discount notes on a single dealer exceeds fifteen (15) percent of the bank's statutory capital base and the notes are taken with recourse or pursuant to a repurchase agreement, the Board of Directors at least annually shall approve the maximum amount to which such aggregate outstanding balance may extend. When in excess of twenty-five (25) percent of the statutory capital base, the line must be reviewed quarterly by the Board of Directors or Loan Committee.

Authority Ga. L. 1974, pp. 733, 793-795; Ga. L. 1983, Act No. 255, effective March 16, 1983.

80-1-5-.06 Loans Secured by Capital Securities. Amended.

No bank may lend upon the capital securities of any corporation which is registered as a bank holding company for such lender bank, unless such securities have an established market for resale and market prices for such securities are regularly quoted by an established exchange or over the counter. This restriction shall not be applicable to loans made prior to the effective date of this section nor to violations resulting from a merger, consolidation or acquisition of the lender occurring after the date of loan, provided such loans are repaid in accordance with the contracted terms. This restriction shall not be applicable to the taking of a security interest to such securities to prevent losses on debts previously contracted. This restriction shall also not be applicable where both the aggregate number of shares in which a security interest is held does not exceed ten (10) percent of the total number of shares outstanding and the credit extended upon the basis of such shares as security does not exceed the book value of such shares.

Authority Ga. L. 1974, pp. 733, 798.

80-1-5-.07 Extensions of Credit Involving Directors or Officers.

(1) The definition and commentary contained in Federal Reserve Regulation "O" shall be applied to effect the intent of Code Section 7-1-491.

(2) The Department may use its discretion in applying the non-preferential loan prohibition, and
in particular may find a violation where it discovers that a bank is attempting to circumvent a prohibition where it would otherwise apply.

Authority Ga. L. 1974, p. 733; Ga. L. 1984, Act 1165, effective March 28, 1984; O.C.G.A. §7-1-491.

80-1-5-.08 Bank Guaranty of Customer Credit Card Obligations at Another Bank.

(1) A bank which does not issue its own credit card but acts as an agent for a correspondent bank may guarantee obligations of established customers in the form of revolving lender credit card accounts at another bank provided the guaranteeing bank establishes a maximum limit for each such account, is not obligated for any amount in excess of such limit, and maintains records updated at least monthly reflecting the current outstanding balance on each account, the approved limit on each account, and the current past due or payment status on each account.

(2) Guarantees outstanding in compliance with the foregoing shall be considered to be in the nature of standby letters of credit and shall be reflected as such on the books and records of the guaranteeing bank. Outstanding guarantees shall be added to customer liabilities in determining compliance with legal loan limitations.

Authority Ga. L. 1974, pp. 733, 801.

80-1-5-.09 Repealed.

80-1-5-.10 Real Estate Leasing.

(1) A bank may become the owner and lessor of real property under certain circumstances described in Code Section 7-1-282.

(2) A bank that desires to lease real property under the conditions in Code Section 7-1-282 must make a letter application to the department to conduct the activity. Such letter application shall include:

(a) A business plan that addresses the accounting, tax and legal implications of this type of leasing and the projected volume and scope of the activity;

(b) Documentation of the experience and expertise of management that indicates ability to handle credit risk and administer the leasing program in conformity with accounting, legal and tax requirements;

(c) Detailed risk analysis to include the potential impact of the activity on the financial and operating condition of the bank;

(d) A copy of any required federal application and approval; and

(e) Any other items requested by the department.

(3) The aggregate limit for such leasing for banks with a statutory capital base under $20,000,000 shall be 100 percent of the bank's statutory capital base. Any higher amount desired must be approved in advance by the department.

(4) The department may at any time restrict the volume of business in this type of leasing if in its judgment there are concerns for safety and soundness of the operation.

Authority O.C.G.A. § 7-1-61; § 7-1-282.